

(1961) 03 CAL CK 0024
In the Calcutta High Court
Case No : Criminal Appeal No. 438 of 1960

Corporation of Calcutta	Vs	APPELLANT
Kedar Nath Ghosh and Another		RESPONDENT

Date of Decision : 30-03-1961

Acts Referred:

Calcutta Municipal Act, 1951 — Section 324(c)

Citation : 65 CWN 764

Hon'ble Judges : Debabrata Mookerjee, J

Bench : Single Bench

Advocate : Sunil Kumar Basu, for the Appellant; Harideb Chatterjee and Radhakanta Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

Debabrata Mookerjee, J.—This appeal by special leave is brought from a decision of a Municipal Magistrate of Calcutta declining to proceed with the case against the respondents on the ground that it was barred by limitation. It appears that the respondents are owners of premises No. 15, Biprodas Street, Calcutta who were served with a notice in terms of section 324(c) of the Calcutta Municipal Act, 1951. That section provides that when the Commissioner is of opinion that any premises intended for human habitation are without privy or urinal accommodation or the existing accommodation is insufficient, inefficient or for sanitary reasons objectionable, he may require the owners to substitute connected privy or connected urinal accommodation for any service privy or service urinal accommodation within 90 days of such requisition. In this case the requisition was served on the respondents on the 7th of August, 1959. Calculating time from the date last mentioned the respondents were required to carry out the requisition within 5th of November, 1959. They failed to do so, and on such failure rendered themselves liable for prosecution. A complaint was accordingly made by the Municipality on the 12th of January 1960; but the Magistrate declined to proceed with it on the ground that it was barred by

limitation and entered an order of acquittal. It is against this order that the present appeal has been brought.

2. Section 582 of the Act provides that no person shall be liable to punishment for any offence against the Act or against any rule or by-law made thereunder, unless complaint of such offence is made before a Magistrate within three months next after the date of the commission of such offence. This provision makes it clear that the Corporation was required to institute a complaint within three months of the date of commission of the offence of failure to comply with a requisition. It is plain that the requisition gave the respondents time to comply with it; and the time allowed by statute is 90 days. Until the period of 90 days expired, it could not be said that an offence had been committed. The gravamen of the offence is the failure to comply with the requisition; and unless that failure occurred there was no offence and consequently there could not be a complaint. If that is a position, then I must hold the Corporation was entitled to prefer a complaint for failure to comply with the requisition u/s 824 (c) within three months after the expiry of 90 days of service of requisition on the respondents. In my view, there can be no question that the time will run with the expiry of the days of grace given by the requisition. It must therefore be held that the Corporation was within time in instituting this complaint on the 12th of January, 1960. The appeal succeeds and is allowed. The order of the Magistrate is set aside. He is directed to proceed with the complaint in accordance with law.